

Regulations on the Protection of Intellectual Property Rights by Customs*

(Decree No. 179, of July 5, 1995)

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Chapter I General Principles

- 1.** These Regulations are enacted in accordance with the relevant laws of the People's Republic of China for the purpose of giving protection to intellectual property rights by the Customs, promoting foreign economic trade and scientific, technological and cultural exchanges, as well as safeguarding the public interests of society.
- 2.** These Regulations apply to intellectual property rights, including the exclusive rights of user in trademarks, copyrights and patents, which are related to the import and export of goods and are protected by the laws and administrative regulations of the People's Republic of China.
- 3.** Any goods which infringe the intellectual property rights (hereinafter referred to as "infringing goods"), which are under the protection of the laws and the administrative regulations of the People's Republic of China, are forbidden from being imported or exported.
- 4.** The Customs Offices of the People's Republic of China shall protect intellectual property rights relating to goods entering or leaving the territory, and shall exercise the relevant powers stipulated under the Customs Law of the People's Republic of China.

5. The consignees of imported goods or the consignors of exported goods as well as their agents (hereinafter collectively referred to as “consignees or consignors”) shall truly and duly report to the Customs Offices the circumstances in respect of the intellectual property rights relating to imported or exported goods and provide the relevant invoices and certificates for examination in accordance with the requirements of the Customs.

6. Owners of intellectual property rights and their agents (hereinafter referred to as “owners of intellectual property rights”) who require the Customs Offices to protect their intellectual property rights relating to goods entering and leaving the territory shall report their intellectual property rights to the Customs Offices for record, and shall apply to the Customs Offices for protective measures in the event of such being considered necessary.

7. The Customs Offices shall keep confidential the commercial secrets of the relevant parties during the process of protecting intellectual property rights.

Chapter II Keeping Records

8. An owner of intellectual property rights applying to be put on record for Customs protection of his intellectual property rights, shall file a written application with the General Customs Administration.

The application shall include the following:

- (1) the intellectual property rights’ owner’s description or name, place of registration or nationality, domicile, legal representative and principal place of business, etc.;
 - (2) the registered number, contents and duration of validity of the registered trademark or patent, or the contents of the relevant copyright;
 - (3) the name of the relevant goods relating to the intellectual property rights and the place of production thereof;
 - (4) the persons who are authorized or licensed to use the intellectual property rights;
 - (5) the relevant circumstances, as regards the goods relating to the intellectual property rights, in respect of the principal Customs Offices of the territory where such goods enter or exit, the import and export traders, the principal characteristics and the regular prices thereof, etc.;
 - (6) the relevant circumstances, as regards the infringing goods, in respect of all known manufacturers, import and export traders, the principal Customs Offices of the territory where such goods enter or exit, the principal characteristics and the prices thereof, etc.;
- and

(7) such other circumstances as the General Customs Administration may consider should be explained.

When submitting the written application, the following documents shall be annexed:

(1) a copy of the identity card, or a duplicate of the certificate of registration, or a copy of the certificate of confirmation issued by the registration authorities, in respect of the owner of the intellectual property rights;

(2) a copy of the certificate of registration of the registered trademark, a copy of the announcement of transfer of the registered trademark as examined and approved by the Trademark Office of China, or a copy of the license agreement for use of the trademark as recorded at the Trademark Office of China; or a copy of the patent certificate, a duplicate of the transfer agreement of the patent as registered and announced by the Chinese Patent Office, or a copy of the license agreement for use of the patent; or documents proving or evidencing the copyright;

(3) such other documents as the General Customs Administration may consider necessary to be annexed.

9. The General Customs Administration shall inform the applicant within 30 days from the date of receipt of all the application documents as to whether approval is given for such record to be kept. In the event of approval being given by the General Customs Administration for such record to be kept, it shall issue a Customs certificate of record for protection of intellectual property rights; and in the event of approval to keep a record being refused, reasons shall be given.

10. The Customs record for protection of intellectual property rights shall have effect as from the date of approval to keep record by the General Customs Administration, for a term of validity of seven years.

Subject to the prior condition that the intellectual property rights must be valid and effective and the ownership of intellectual property rights must be valid and effective, the owner of intellectual property rights may, within the six months preceding the expiration of the Customs record for protection of intellectual property rights, apply to the General Customs Administration for renewal of the record term. The term of validity for each renewal shall be a period of seven years.

In the event of no application for renewal being made upon the expiry of the term of validity in respect of the Customs record for protection of intellectual property rights, or upon the expiry of the legal protection period for the exclusive right to use the trademark, copyright and patent concerned, the Customs record for protection of intellectual property rights shall automatically cease to have effect.

11. In the event of changes in circumstances in respect of recorded intellectual property rights, the owner of the intellectual property rights shall within 10 days of the change

being examined and approved by the authorities in charge of intellectual property rights comply with the formalities for alteration or revocation of the record with the General Customs Administration.

Chapter III Application

12. If the owner of intellectual property rights recorded with the General Customs Administration discovers that suspected infringing goods are about to enter or exit the territory, he may apply to the Customs Offices where such goods are to enter or exit the territory for protective measures to be taken in respect of intellectual property rights.

13. A request to the Customs for the taking of protective measures in respect of intellectual property rights shall be by way of written application.

The written application shall include the following:

- (1) the name of the intellectual property rights to be protected, and the number of the Customs record;
 - (2) the name, domicile, legal representative and principal place of business of the person suspected of infringement;
 - (3) the name, specifications, and relevant circumstances in respect of the suspected infringing goods;
 - (4) the possible ports of entrance or exit, time, means of transport, consignees or consignors and relevant circumstances in respect of the suspected infringing goods;
 - (5) evidence relating to the infringement;
 - (6) the measures required of the Customs Offices;
- and
- (7) such other matters as the Customs may consider to be necessary.

14. If the applicant requires the Customs Offices to detain the suspected infringing goods, then he shall provide the Customs Offices with security which shall be equal to the C.I.F. (cost, insurance, freight) price of the imported goods or the F.O.B. (free on board) price of the exported goods.

15. If the owner of intellectual property rights requires the Customs Offices to take measures to protect intellectual property rights which have not been recorded at the General Customs Administration, he shall at the time of such request also proceed under

Article 8 of these Regulations to fulfill the formalities required for keeping record of intellectual property rights.

16. If the application filed by an applicant for taking protective measures of intellectual property rights does not comply with the provisions of this Chapter, the Customs Offices shall refuse to accept the application.

Chapter IV Investigating and Handling

17. If the Customs Offices decides to detain suspected infringing goods pursuant to an application by the owner of intellectual property rights, the Customs Offices shall issue a certificate of Customs detention, deliver the same to the consignees or consignors, and notify the applicant in writing.

In the event of the consignees or consignors considering that their imported or exported goods do not infringe the applicant's intellectual property rights, they shall submit a written explanation to the Customs Offices within seven days from the date of delivery of the certificate of Customs detention.

If the consignees or consignors have not raised any objection, the Customs Offices shall, after investigation, have the power to deal with the suspected infringing goods under detention as if they were infringing goods; whereas, if objections are raised, the Customs Offices shall immediately notify the applicant in writing.

The applicant shall be entitled to bring the infringement dispute before the competent authorities in charge of intellectual property rights for hearing, or to submit a claim to the people's courts, within 15 days from the date of delivery of the written notice stipulated in the first paragraph of this Article.

18. If the Customs suspect that the imported or exported goods are in infringement of intellectual property rights already recorded at the Customs, the Customs Offices shall have the power to detain the goods. For suspected infringing goods detained by the Customs, the Customs Offices shall issue a certificate of Customs detention, deliver the same to the consignees or consignors, and immediately notify the applicant in writing. The owner of the intellectual property rights shall within three days of the delivery of such notice submit a written application for protection of intellectual property rights, and shall be dealt with in accordance with the stipulations under Article 17 of these Regulations.

19. If the consignees or consignors consider that their imported or exported goods do not infringe the applicant's intellectual property rights, they may request the Customs Offices to release the relevant goods after they have provided the Customs Offices with security which shall be twice the amount of the C.I.F. price for the imported goods or the F.O.B. price for the exported goods.

20. When the Customs Offices detain suspected infringing goods pursuant to Articles 17 and 18 of these Regulations, the Customs shall conduct investigations in respect of the detained goods and the relevant circumstances within 15 days from the date of detention; but with the exception of cases which have already been brought by the relevant parties before the competent authorities in charge of intellectual property rights for hearing or have submitted a claim to the people's courts.

If the Customs Offices consider that there is suspicion of criminal acts, then the Customs shall transfer the case to the relevant authorities for investigation.

21. When the Customs Offices are investigating the suspected infringing goods detained by the Customs and the relevant circumstances, the owners of the intellectual property rights shall provide the necessary assistance.

22. If the suspected infringing goods detained by the Customs Offices are affected by any of the following circumstances, the Customs Offices may release the goods:

(1) the exclusion of any suspicion of infringement after investigation by the Customs Offices or by the competent authorities in charge of intellectual property rights;

(2) the exclusion of any suspicion of infringement according to a decision or verdict of a people's court;

(3) the failure of the relevant parties to submit a claim to a people's court within the prescribed time, or the case not being accepted for hearing pursuant to a decision of a people's court, or no ruling having been obtained from the people's courts for preservation of property;

(4) the failure of the owner of the intellectual property rights to reply within the prescribed time, or the abandonment of customs protection in respect of the intellectual property rights.

23. In the event of the suspected infringing goods detained by the Customs Offices being confirmed as infringing goods by the Customs Offices, the competent authorities in charge of intellectual property rights or the people's courts, the Customs shall confiscate the goods.

24. The Customs shall, depending on the circumstances, dispose of the confiscated infringing goods in accordance with the following stipulations:

(1) for goods in infringement of copyrights, such goods shall be destroyed;

(2) for goods in infringement of trademarks, where the infringing trademarks cannot be removed, such goods shall be destroyed;

where the infringing trademarks can be removed and the relevant goods may be utilized, the infringing trademarks shall be removed, and the relevant goods used exclusively in social welfare operations or sold by public auction in accordance with the law for the personal benefit of the rightful owner;

(3) other infringing goods outside the stipulations of the preceding two paragraphs shall be dealt with in accordance with the relevant provisions of the State Council.

25. After the decisions or rulings made by the Customs Offices or the competent authorities in charge of intellectual property rights or the people's courts have taken effect, the Customs Offices shall refund the security provided by the relevant parties after deducting the following costs:

(1) the relevant costs for storing, keeping and handling, etc., of the goods;

(2) the compensation payable to the relevant parties for losses occasioned to them because of improper application.

26. Civil disputes between the owners of the intellectual property rights and the consignees or consignors of the goods shall be resolved by judicial, arbitration or other means as the parties may choose in accordance with the law. The Customs Offices shall not accept such cases for prosecution.

27. After the Customs shall have accepted applications for keeping record of intellectual property rights and for the taking of protection measures for intellectual property rights, if, by reason of the failure of the owner of intellectual property rights to provide proper information, the Customs Offices are unable to find the infringing goods, or unable to take the protective measures in time, or have taken inappropriate protective measures, the Customs shall not be under any liability therefor, and the owner of the intellectual property rights shall bear the liability therefor himself.

Chapter V Legal Liability

28. Where the consignees or consignors know or ought to know that their imported or exported goods infringe another person's intellectual property rights, the Customs Offices may impose a fine on the consignees or consignors of an amount less than the C.I.F. price for the imported goods or the F.O.B. price for the exported goods.

29. Where the consignees or consignors have failed to duly make true reports on the circumstances concerning the intellectual property rights relating to the imported or exported goods, or to provide the relevant invoices and certificates for examination, the Customs Offices may impose a fine on the consignees or consignors of an amount less than the C.I.F. price for the imported goods or the F.O.B. price for the exported goods.

30. If the parties are dissatisfied with the imposition of fine decided by the Customs, they may apply for review to the Customs Offices which imposed the fine or the next higher Customs Offices, within 30 days from the date of receipt of the notice of fine, or if the customs offices are unable to notify the parties, within 30 days from the date of public announcement of the fine imposed. The relevant Customs Offices shall take the review decision within 90 days from the date of receipt of the application for review. If the parties are dissatisfied with the review decision, they may submit a claim to the people's courts within 30 days from the date of receipt of the review decision.

The parties may also submit a claim directly to the people's courts within 30 days from the date of receipt of the fine notice or the announcement of the decision to impose fines by the Customs Offices.

31. If the infringing goods imported or exported involve criminal acts, the relevant persons shall be investigated for criminal liability in accordance with the law.

32. During implementation of protection for intellectual property rights, any Customs officer who abuses his powers, or intentionally creates difficulties, or neglects his duties or seeks private benefits shall, if his conduct amounts to a crime, be investigated for criminal liability in accordance with the law; and if his conduct does not amount to a crime, administrative penalties shall be imposed on him.

Chapter VI Supplementary Provisions

33. If the items and luggage carried by an individual in or out of the territory, or articles mailed in or out of the territory, exceed a reasonable amount for own use and infringe intellectual property rights protected by the laws and administrative regulations of the People's Republic of China, they shall be regarded as infringing goods and dealt with in accordance with the relevant provisions of these Regulations.

34. When implementing protection for intellectual property rights, the Customs Offices may charge fees necessary for the recording, detention and handling of the infringing goods. The detailed provisions shall be enacted by the General Customs Administration jointly with the Department of finance and the Department in charge of prices under the State Council.

35. The detailed rules for the making of applications to the Customs to keep record of intellectual property rights and to take protection measures for intellectual property rights, and the relevant forms therefore, shall be enacted by the General Customs Administration.

36. These Regulations shall be applied as from October 1, 1995.